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Filed Date: 2/3/23

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW  
YORK  
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JESUS ABULARACH,

Plaintiff,

v.

HIGH WING AVIATION LLC,

Defendant.

**ORDER**

22-CV-1266 (MKB) (RML)

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MARGO K. BRODIE, United States District Judge:

Plaintiff Jesus Abularach commenced the above-captioned action against Defendant High Wing Aviation LLC on March 8, 2022, alleging breach of contract and unjust enrichment in the alternative arising out of the purchase and sale of an aircraft. (Compl., Docket Entry No. 1.) Defendant failed to appear or otherwise respond to the action, and the Clerk of Court entered default against it on June 1, 2022. (Clerk's Entry of Default, Docket Entry No. 12.) On June 1, 2022, Plaintiff moved for a default judgment, (Pl.'s Mot. for Default J. ("Pl.'s Mot."), Docket Entry No. 13), and on June 2, 2022, the Court referred Plaintiff's motion to Magistrate Robert M. Levy for a report and recommendation, (Order dated June 2, 2022.)

By report and recommendation dated December 19, 2022, Judge Levy recommended that that the Court grant Plaintiff's motion for default judgment, enter a judgment that Defendant be held liable for breach of contract, and award Plaintiff (1) a sum of \$180,000 in damages, and (2) prejudgment interest "at a per diem interest rate of \$44.38" from "March 8, 2022 to the date of this court's judgment" ("R&R"). (R&R 5, Docket Entry No. 19.) No objections to the R&R have been filed and the time for doing so has passed.

## I. Discussion

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate[] [judge’s] report and recommendation operates as a waiver of further judicial review of the magistrate[] [judge’s] decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

## II. Conclusion

For the foregoing reasons, the Court adopts the R&R, grants Plaintiff's motion for a default judgment and finds that Defendant is liable for breach of contract. The Court awards Plaintiff (1) a sum of \$180,000 in damages, and (2) prejudgment interest at a per diem interest rate of \$44.38 from March 8, 2022 to the date of the judgment. Plaintiff is directed to serve copies of this Order upon Defendant at their last known addresses and to file proof of service with the Court. The Clerk of Court is respectfully directed to close this case.

Dated: February 3, 2023  
Brooklyn, New York

SO ORDERED:

/s/ MKB  
MARGO K. BRODIE  
United States District Judge